

U.S. Pat. App. Ser. No. 09/786,495
Amendment dated January 21, 2004
Reply to Office Action of July 22, 2003

PATENT

Attorney Docket 606-25-PCT-PA

REMARKS/ARGUMENTS

This paper is submitted in response to the office action mailed July 22, 2003. A request for a three-month extension of time pursuant to 37 CFR 1.136(a) is submitted herewith, along with the fee prescribed by 37 CFR 1.17(a)(3). The response is therefore timely.

Claims 1-7, 9, and 10 were examined. Claims 1-3, 5-7, and 9 were rejected. Claims 4 and 10 were objected to. By this amendment, claims 1-7, 9, and 10 have been canceled, and new claims 11-19 have been presented. As discussed below, it is respectfully submitted that claims 11-19 are patentable over the art of record.

Of the claims that were examined, claims 2, 5-7, and 9 were rejected under 35 U.S.C. §112, second paragraph. New claims 11-19 have been drafted to overcome these rejections, and it is believed that all of the new claims now comply with Section 112.

Claims 1, 3, and 9 were rejected under 35 U.S.C. §102(e) as anticipated by US 6,146,881 – Hering. It is respectfully submitted that Hering is not a proper reference, in that it does not qualify as prior art under Section 102. Hering has a filing date of September 24, 1998. The subject application claims priority under 35 U.S.C. §119(a) from Danish application no. PA 1998 01102, which was filed September 2, 1998. A copy of the declaration filed in the subject application, showing the proper claim of priority and the correct filing date of the Danish application, is enclosed. Under 35 U.S.C. §119(a), the filing of the application in Denmark, a WTO member country, “shall have the same effect as the same application would have if filed in this country on the date on which the application for patent for the same invention was first filed in such foreign country, if the application in this country is filed within twelve months from the earliest date on which such foreign application was filed.” Within twelve months from the Danish filing date (i.e., on September 1, 1999), International Application No. PCT/DK99/00458, designating the US, was filed for the subject invention, with priority claimed from the above referenced Danish application. Under 35 U.S.C. §363, that international application has the effect, from its international filing date, of a national application filed in the USPTO. The subject application is a §371 filing of this international application. A copy of the cover page of

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the international application is enclosed, showing (1) the priority date of 2 September 1998; and (2) the international filing date of 1 September 1999.

Accordingly, the priority properly claimed from September 2, 1998 for the subject application removes the Hering patent as a reference under 35 U.S.C. §102(e).

In support of applicant's claim for priority, applicant submits a certified copy of the priority document, along with a certified translation of that document.

It is noted that the filing receipt for the subject application states an improper date for the Danish application from which priority was claimed. A copy of the filing receipt is enclosed, and applicant respectfully requests that a corrected filing receipt be issued.

Claims 1, 3, and 9 were also rejected under 35 U.S.C. §102(b) as anticipated by US 5,106,584 – Funakubo et al. It is respectfully submitted that new claims 11-19 define subject matter that is neither taught nor suggested by this reference, taken by itself or in any combination with the other art of record that might suggest itself to those skilled in the pertinent arts.

Specifically, new claim 11 presents the allowable subject matter of claim 2 in independent form. New claim 12 defines the capillary tube device as comprising "a transparent section with an inner cross section larger than said specific particles." It is respectfully submitted that this feature is neither shown nor suggested by the cited references. New claim 13 is similar to new claim 12, and further defines the capillary tube device by incorporating the limitations of claim 3. New claim 14 presents the allowable subject matter of claim 4 in independent form. New claim 15 presents the allowable subject matter of claim 5 in independent form. New claim 16 is similar to claim 15, but it further defines the capillary tube as having "a transparent section with an inner cross section larger than said specific particles," as in new claim 12. New claim 17 presents the allowable subject matter of claim 6 in independent form. New claim 18 depends from any one of claims 11-17 and incorporates the allowable subject matter of claim 7. New claim 19 depends from any one of claims 11-17, and thus incorporates the limitations that make these claims allowable over the art of record.

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In summary, it is respectfully submitted that new claims 11-19 are patentable over the art of record and are in compliance with 35 U.S.C. §112. Allowance of these claims is therefore respectfully requested.

The specification has been amended to overcome the informality noted by the Examiner. Also, as requested by the Examiner, a new Abstract has been provided on a separate sheet.

In view of the foregoing, it is respectfully submitted that the application is in condition for allowance. Passage of the application to issue is therefore earnestly solicited.

Respectfully submitted,

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